APPEAL NO. 93437

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1993). On April 21, 1993, and April 30, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that respondent (claimant) was injured in the course and scope of employment on (date of injury), but has not had disability thereafter. Appellant (carrier) asserts that it was error to find a causal connection between the work and injury and that the decision is against the great weight of the evidence. Claimant did not appeal the decision against him on the disability issue and did not reply to carrier's appeal.

DECISION

We affirm.

At the hearing all parties agreed that there were two issues: (1) whether claimant's current condition is the result of an accident at work or a preexisting condition and (2) if the claimant was compensably injured, does he have disability? The hearing officer correctly declared the first issue to place a burden of proof on the claimant to show that he sustained some injury in the course of employment; she then added that the issue included a sole cause defense which placed the burden of proof on the carrier to prove that claimant's condition was solely the result of (in this case) a preexisting condition. She added that claimant had the burden of proof as to disability.

Article 8308-6.42(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested." The carrier asserts two issues on appeal: (1) the hearing officer erred in finding a causal connection between "claimant's injury and the alleged work-related injury;" (2) the hearing officer's decision is against the great weight and preponderance of the evidence.

The Appeals Panel determines:

That there was no error in finding a causal connection between the work incident and the injury.

That the decision of the hearing officer is not against the great weight and preponderance of the evidence.

Claimant began work as a shipping clerk for the employer in May 1991. He handled supplies and equipment weighing a few ounces to several hundred pounds. He used a forklift as part of his job. On the day in question he used a forklift to move a rotor, which as the hearing officer states, was shown to weigh at least 250 pounds. After the initial placement, claimant testified that the rotor was not properly in place; he was urged to simply slide or slightly lift and move the rotor the few inches in question with another employee. Claimant testified that he and the other employee did just that and he hurt his back. Claimant stated that he exclaimed "ow," but continued to work and did not see a doctor for

10 days. Claimant did not miss work and was laid off in January, 1993.

There was no issue of notice.

The carrier, through its witnesses, stated that customarily the forklift is used to move heavy items. The employee with whom claimant stated he moved the rotor said at the first session of the hearing that claimant may have helped lift the rotor; this employee at the later session was recalled and said he had not lifted a big rotor by hand with the claimant. Claimant's supervisor testified that heavy items have been moved by hand but are not lifted by hand. He did not recall claimant telling him that he got hurt on the job but does recall that claimant said he could not work.

One medical report indicates that claimant saw (Dr. P) on October 12, 1993, who recorded a history of claimant developed pain without "any specific mechanism of injury." Another report by (Dr. M) on October 12, 1992, says the claimant described lifting heavy objects on October 2nd at work. In addition, a carrier's witness who worked with worker's compensation claims stated that she got a call from the doctor's office on October 12, 1993, saying that claimant insisted that the injury was a workers' compensation one--this witness was sure that call came on October 12th and not some later date.

The carrier in stating that the hearing officer erred in finding a causal connection cites various cases. One, Hernandez v. T.E.I.A., 783 S.W.2d 250 (Tex. App.-Corpus Christi 1989, no writ) cites the general rule when it says that lay witness testimony is sufficient to establish a causal connection. (*Also see* Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992, which points out that lay witness evidence may establish causation.) The carrier also says "even lay testimony must establish the causal connection with reasonable medical probability. . . ." Without being aware of how this could ever occur, the Appeals Panel does not follow such a principle. The Appeals Panel will only require medical evidence to prove causation in certain areas, such as cancer, that are outside the common knowledge of the fact finder. *See* Texas Workers' Compensation Commission Appeal No. 93265, decided May 20, 1993. *Also see* Parker v. Employers Mutual Liability Ins. Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969). While carrier says that there was evidence claimant's condition preexisted the incident, it does not assert that it met its burden of proving that the preexistent condition was the sole cause; as such, sole cause is not an issue on appeal.

Sufficient evidence supported the hearing officer's decision and order. There was evidence that claimant moved the rotor; there was testimony that he did not. The hearing officer assigns credibility and weight and decides conflicts in evidence. (*See* Article 8308-6.34(e), *supra*, and Perry v. Perry Bros. Inc., 753 S.W.2d 773 (Tex. Civ. App.-Dallas 1988, no writ). She is in the best position to judge the demeanor of the witnesses when testifying. The claimant does not have to know the exact etiology of his injury when he sees a doctor for the first time in order for a hearing officer to find injury in the course of employment. In this case one doctor's record, dated October 12th, indicates claimant did relate the injury to

lifting on the job and carrier's witness confirmed that a doctor's office phoned her that day asserting a similar history.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. As the fact finder, we will overrule her findings on questions of fact only when her findings are against the great weight and preponderance of the evidence. *See* In re Kings' Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge